IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/06/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.3417 OF 1996

Dollar Company Private Ltd.,
Pharmacuetical Manufacturers
Andhra Insurance Building
156, Thambu Chetty Street,
Madras 600 001. .. Petitioner

-Vs-

1. The Secretary, PWD Highways,
Government of Tamil Nadu,
Ezhilagam, Madras 600 005..

2. The Secretary,
Ministry of Surface Transport,
Parivahar Bhawan,
1, Sansad Marg, New Delhi 110 001.

3. The Collector of Madras,
Ezhilagam Annexe, Madras 5.

4. The Chairman,
Madras Port Trust,
Rajaji Salai, Madras 1.

5. The Commissioner,
Corporation of Madras,
Ripon Building,
Madras 3.

6. The Chairman,
Madras Metropolitan Development
Authority,
8. Gandhi-Irwin Road, Madras 8. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.P. Haridas
Senior Counsel for

Mr.K. Ganesan

For Respondents 1-3 : Mr.R. Thenmozhi Sivaperumal
A.G.P.,
Respondent-4 : Mr.R.S. Jeevarathinam
Respondent-5 : Mr.P. Sundaram
Respondent-6 : Mr.V. Perumakl

:J U D G M E N T

The petitioner, a private limited company has filed the writ petition to quash the Land Acquisition Notification No.32 dated 12.8.1959 issued by the Public Works Department (Highways) Acquisition of Lands (G.O.R.984 PW (Highways) dated 30.7.1959, culminating in the Award

No.2/1960 (Port Trust) under Section 11 of the Land Acquisition Act dated 10.2.1960 in file No.F1/4466/60 and to restore the acquired land to the original owner, namely the petitioner.

2. There is no dispute that at the time of the aforesaid impugned acquisition, the petitioner was the owner of the acquired land. The said land was acquired by invoking emergency clause under Section 17(1) read with Section 17(4) of the Land Acquisition Act (hereinafter referred to as the Act) dispensing with the enquiry under Section 5-A of the Act and thereafter possession was taken on 27.1.1960. Subsequently, a very small portion of the land has been released in favour of the petitioner, but the major portion remained in possession of the respondent No.4, for whose benefit the land has been acquired.

3. It is the case of the petitioner that though the land has been acquired for construction of residential houses for the employees of the fourth respondent, namely Madras Port Trust, the land remained unutilised for more than three decades and ultimately in 1991, construction regarding a sports complex for the purpose of SAF Games begun. At that stage, the petitioner entered into correspondence with the respondents protesting about the subsequent action relating to construction of sports complex even though the land was acquired for residential purpose and the petitioner had prayed that the land should be returned to him as the same was acquired from the petitioner. Ultimately the present writ petition has been filed.

4. The main contention raised in the writ petition is to the effect that though the land has been acquired by invoking the emergency clause and possession has been taken back in 1960, the land remained unutilised for a pretty long period and thereafter it is being used for developing a sports complex which is against the purpose for which the land has been acquired.

5. Counter affidavits have been filed on behalf of the contesting

respondents including the respondent No.4. It has been indicated that construction of a sports complex cannot be said to be against the purpose for which the land has been acquired as such sports complex would be beneficial for the employees and their children. It is also contended that the writ petition which has been filed about 35 years after completion of the land acquisition process is hit by the principles of acquiescence and laches and is liable to be dismissed.

6. Learned counsel for the petitioner has placed strong reliance upon the decision reported in 1977(1) SCC 133 (NARAYAN GOVIND GAVATE AND OTHERS v. STATE OF MAHARASHTRA AND OTHERS) and contended that the very fact that no construction had been made for a period of 33 years would clearly belie the claim of urgency and therefore, the land acquisition invoking the provision 17(1) read with 17(4) was void ab initio.

7. It is no doubt true that as observed by the Supreme Court in the case cited as well as in other decisions that unless there is a real urgency, invocation of Section 17(1) read with 17(4) of the Act would not be justified. The very fact that the land has remained unutilised for a very long period would belie the claim of urgency. However, this conclusion would not be sufficient to quash the land acquisition proceedings at this highly belated stage.

8. It is not disputed that possession has been taken and even compensation had been paid to the petitioner which had been accepted. If the petitioner was aggrieved by the action of the authorities in acquiring the land by invoking emergency clause and by dispensing with the enquiry under Section 5-A, one would have expected the petitioner to challenge the same soon after the acquisition. It is obvious that the petitioner has acquiesced in the action of the Government, firstly by accepting the award and secondly by remaining quiet for more than three decades. The writ petition filed after such a long time is hit by the principles of acquiescence and laches as has been held by the Supreme Court in A.I.R. 1996 SC 497 and 1997(1) SCC 133 (NARAYAN GOVIND GAVATE AND OTHERS v. STATE OF MAHARASHTRA AND OTHERS).

9. Learned counsel for the petitioner has also submitted that the purpose for which the land was acquired has been changed by constructing a sports complex inspite of constructing residential accommodation. For the aforesaid purpose, learned counsel has relied upon the decision reported in A.I.R. 1982 Delhi 462 (UNION OF INDIA AND OTHERS v. NAND KISHORE AND ANOTHER) and A.I.R. 1990 ALLAHABAD 219 (VINOD KUMAR AND OTHERS v. STATE OF U.P. AND OTHERS). A perusal of the aforesaid two decisions makes it clear that the purpose for which the land acquisition has been made cannot be changed in midstream. In other words, before completion of the land acquisition proceedings, if the Government has changed the purpose for which land has been acquired, such proceedings would become invalid. Such is not the case here.

10. In the present case, there is no question of changing the

purpose in the midstream as the acquisition has been completed very long back. As contended by the counsel for the fourth respondent, construction of a sports complex cannot be said to be for a different purpose. Development of sports complex can also be said to be to the benefit of the residents and employees of the Port Trust and it cannot be said that the land is being used for a different purpose.

11. For the aforesaid reasons, I do not find any merit in the writ petition, which is accordingly dismissed. No costs.

Index : Yes
Internet : Yes
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To

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